

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SHAWN EGGSWARE,

Plaintiff,

1:22-cv-897 (BKS/TWD)

v.

SEAN CARTER, et al.,

Defendants.

Appearances:

Plaintiff pro se:
Shawn Eggsware
Waterford, NY 12188

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff pro se Shawn Eggsware brought this action on August 29, 2022, against Defendants Sean Carter, Robyn Rihanna Fenty, and Alicia Augello Cook on a form complaint under 42 U.S.C. § 1983, alleging that people are “watching [him] play with [his] daughter.” (Dkt. No. 1, at 1-2). This matter was referred to United States Magistrate Judge Thérèse Wiley Dancks who, on October 13, 2022, issued a Report-Recommendation granting Plaintiff’s application to proceed *in forma pauperis* (“IFP”) and recommending that Plaintiff’s complaint be dismissed for lack of subject matter jurisdiction without prejudice and with leave to replead. (Dkt. No. 4, at 5, 8). Magistrate Judge Dancks noted that Plaintiff’s complaint fails to establish federal question jurisdiction under 42 U.S.C. § 1983 because “there is nothing in the complaint to suggest Defendants are ‘state actors’ or private citizens acting under the color state law.” (*Id.* at 5). Magistrate Judge Dancks also noted that Plaintiff’s complaint fails to establish diversity

jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because it “fails to establish complete diversity of citizenship between the parties and the amount in controversy is not met in this case.” (*Id.*).

Despite “serious doubts about whether Plaintiff can amend to assert any form of federal jurisdiction,” Magistrate Judge Dancks recommended affording Plaintiff an opportunity to amend his complaint in light of “Plaintiff’s *pro se* status and out of an abundance of caution.”

(*Id.* at 6). Further, Magistrate Judge Dancks noted that “Plaintiff has a history of filing IFP complaints in the Northern District of New York that are dismissed on initial review,”¹ and cautioned Plaintiff “that the filing of vexatious, harassing, or duplicative lawsuits may result in the imposition of sanctions, including limitations on his ability to file without prior permission of the Court.” (*Id.* at 7 (citing *Ajamian v. Nimeh*, 14-cv-0320, 2014 WL 6078425, at *3, 2014 U.S. Dist. LEXIS 159803, at *9 (N.D.N.Y. Nov. 13, 2014))). Magistrate Judge Dancks advised Plaintiff that under 28 U.S.C. § 636(b)(1), he had fourteen days within which to file written objections to the report, and that failure to object to the report within fourteen days would preclude appellate review. (*Id.*). Plaintiff did not file an objection to the Report-Recommendation.

As no objection to the Report-Recommendation has been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is hereby

¹ *See Eggsware v. Doe*, No. 22-cv-00054 (Mar. 18, 2022); *Eggsware v. Albany Masonic Temple et al.*, No. 21-cv-00933 (April 14, 2022); *Eggsware v. East Coast Syndicate et al.*, No. 21-cv-01064 (May 5, 2022); *Eggsware v. U.S. Secret Serv. et al.*, No. 21-cv-01029 (May 11, 2022); *Eggsware v. Winfrey et al.*, No. 22-cv-00077 (May 2, 2022); *Eggsware v. Google et al.*, 22-cv-00868 (Oct. 11, 2022).

ORDERED that Magistrate Judge Dancks's Report-Recommendation (Dkt. No. 4) is **ADOPTED**; and it is further

ORDERED that Plaintiff's complaint is **DISMISSED** without prejudice, with leave to replead; and it is further


ORDERED that Plaintiff may file an amended complaint **within thirty (30) days** of the date of this Order that complies with the Report-Recommendation and this Order; and it is further

ORDERED that if Plaintiff fails to file a timely amended complaint or to request an extension of time to do so, the Clerk is directed to enter judgment without further order of this Court; and it is further

ORDERED that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 7, 2022
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge